

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 1777 of 2003****For Approval and Signature:****HONOURABLE MR.JUSTICE K.M.MEHTA**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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REGIONAL DIRECTOR - Appellant(s)
Versus
NARANBHAI VALJIBHAI - Defendant(s)

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Appearance :

MR SHASHIKANT S GADE for Appellant(s) : 1,
MR PANKAJ R DESAI for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA**Date : 04/07/2007****ORAL JUDGMENT**

1. The Regional Director, ESI Corporation, Ahmedabad (orig.respondent), the appellant herein has filed this appeal under Sec.82(2) of the Employees

State Insurance Act, 1948 (hereinafter referred to as 'the Act' for short) against the judgment and award dated 29th May 2003 passed by the ESI Court No.1, Rajkot, Gujarat in Second Appeal (ESI) No.1 of 2000 filed by the appellant - Regional Director, ESI in this behalf. By the impugned order, the learned Judge was pleased to dismiss the appeal of the Corporation and confirmed the order dated 28th Aug.2000 passed by the Medical Appeal Tribunal, Rajkot in M.A.T. No. 1 of 1993 is confirmed.

2. The brief facts of the case are that:

2.1 Shri Naranbhai Valjibhai, respondent herein, aged about 40 years was working with M/s.Kanti Cotton Mills, a Unit of GSTC Ltd., Surendranagar, as a weaver in loom shed Department since 5th Nov.1973. As per Form No.16-A dated 27th Sept.1990, submitted by M/s.Kanti Cotton Mills, along with the statement of the insured person, witnesses and medical certificate dated 14th July 1990 the respondent had deafness caused by noise since 8th June 1990. His case is that the deafness was due to noise of loom shed where he was working in the Mill and the case is of occupational disease under Sec.2(8) of the Act and therefore, he requested to refer him to Medical Board for assessing the permanent disablement and loss of earning capacity due to the occupational disease.

2.2 The respondent's case was referred to Special Medical Board, duly constituted under Regulation 75

of the ESI General Regulations, 1950 or assessment of loss of earning capacity if any. The Medical Board examined the respondent on 11.11.1991 and 15.12.1992 and found that the hearing loss of the insured person could be due to middle ear pathology only and as such it could not be attributed to occupational hazard (noise).

2.3 Being aggrieved and dissatisfied with the above decision of the Medical Board, the respondent (orig.applicant) filed Appeal No. 1 of 1993 before the Medical Appeal Tribunal which is also legally constituted body under Regulation 76 of the ESI General Regulations, 1950. After examining the papers of the respondent, the Medical Appeal Tribunal awarded 90% disability for both ears and the findings are as under:

"In this case, Medical Assessor Shri B.A.Sachdev examined clinically the injured part (ear) of respondent in which he gave opinion of permanent disablement of 90% for which assessors of Union, Shri S.F.Bavisi and J.T.Solanki also supported the above opinion."

2.4 The learned Judge, thereafter in agreement with the above opinion of the Doctors, passed the following order:

"Appeal of appellant is accepted and orders of 0% of Medical Board is set aside, and decided

to give 90% permanent disablement."

2.5 Being aggrieved and dissatisfied with the above order of the Medical Appeal Tribunal, the Regional Director, ESI Corporation, Rajkot filed E.I. Second Appeal No.1 of 2000 before the Employees Insurance Court, at Rajkot on 5.12.2000.

2.6 In the proceedings before the Employees Insurance Court, Rajkot, the Factory Manager of M/s.Kanti Cotton Mills submitted a Form which shows that the workman was employee in the Mill from 5.11.1973; the date of commencement of occupational disease is 8.6.1990; and when he was examined, his age was 40 years and the date of issue of medical certificate in respect of occupational disease is 14.7.1990. Before the ESI Court, a Form dated 31.10.1991 was produced which shows that the respondent had hearing impairment from 8.6.1990. Along with this, the audiogram report of the respondent was also produced of Civil Hospital, Ahmedabad which shows that the hearing sensitivity is of 90-95%. The Medical Appeal Tribunal has relied upon the opinion of Medical Assessor Dr.B.S.Sachdev along with the assessors of union, Shri S.F.Bavisi and Shri J.T.Solanki, that the respondent had 90% permanent disablement. In view of the same, the Tribunal has held that the respondent had 90% permanent disablement of hearing aspect. In the Appeal, the respondent has also filed his reply dated

19.4.2001.

2.7 It may be noted that the ESI Corporation has relied upon the report of Dr.Raju, ENT Specialist who has opined that the respondent has 0% hearing loss. In the reply, the respondent has specifically stated that when he was being examined, at that time, he was called separately and was intimidated that he has to say that there was no hearing and if any, the Mill or the Corporation will be liable for the same. According to the respondent, the said report has been obtained after intimidation and threat given to him. He has relied upon the certificates issued by Dr.Hemakshi Ghoda and Dr.Vipul Sad and according to them, the respondent had hearing problem of 90-95%. The respondent has submitted that he was working in the Mill since about 20 years and in the Mill, the noise standard was 70% decibal above the ordinary level and therefore, it was difficult to hear the normal conversation in this behalf. According to him, the Mill has not taken any extra care and because of huge noise pollution in the Mill his hearing capacity has been decreased in this behalf. He has relied upon the Schedule III under the provisions of the Act, particularly item No.14 which provides for hearing impairment caused by noise, all work involving exposure to the risk concerned. According to the respondent, he has only to prove that his case is covered by the insurance taken by the employer for his hearing impairment was due to noise pollution. He has stated that as per the report of audiogram,

because of the noise pollution, it was not possible for normal conversation in this behalf.

2.8 In view of this, the Insurance Court has considered the entire evidence on record and after going through the same, the learned Judge has held that the respondent workman had 100% disablement in hearing and therefore, the Court believed the case of the respondent workman and dismissed the appeal of the Corporation.

2.9 Mr.S.S.Gade, learned advocate appearing on behalf of the appellant has tried to assail the award of the Tribunal on various grounds. He has mainly relied upon the medical report dated 15.12.1992 wherein the Doctor has opined about the hearing loss in this case is not due to occupational hazard (noise). Except this, no other report has been submitted by the Corporation.

3. Mr.Pankaj Desai, learned advocate for the respondent has submitted that the aforesaid medical reports had been obtained by threat and intimidation of the respondent-workman and therefore, the Tribunal has held that the respondent has 90-100% of hearing loss in this behalf. Mr.Desai, learned advocate for the respondent workman has relied upon the decision of the **Andhra Pradesh High Court in the case of E.S.I.Corporation, Hyderabad v. P.Srinivasa Reddy and anr., reported in 2007(1) LLJ 397** wherein it has been held that th disability assessed by the ESI Court at

40%, despite totally negative finding by Medical Appeal Tribunal, the assessment of ESI Court upheld as proper.

4. The appeal is filed under Sec.82(2) of the Act which provides that the appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves a substantial question of law. In my view, after going through the evidence on record, it appears that there is no substantial question of law involved in this appeal and therefore the appeal is required to be dismissed and the same is hereby dismissed.

5. Mr.Desai, learned advocate for the respondent workman has stated that the entire awarded amount has been deposited before the Tribunal and the respondent workman may be permitted to withdraw the same. In view of the above, the Tribunal is directed to disburse the amount so deposited, to the respondent workman after due verification.

(K.M.Mehta, J.)

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